

for the conclusion at which the learned vakil arrived as to the insufficiency of the value of the subject matter of the suit, and it is not made out that there is an error apparent on the face of the record or any sufficient reason for granting the review. If leave to appeal is to be obtained, it must, in the circumstances, be obtained from their Lordships of the Privy Council, and not from us.

The application must, therefore, be dismissed with costs.

N. R. CHATTERJEA J. concurred.

S. M.

Application refused.

1912
 ———
 NAND
 KISHORE
 SINGH
 v.
 RAM GULAM
 SAHU.
 ———
 JENKINS
 C.J.

CRIMINAL REFERENCE.

Before Mr. Justice Holmwood and Mr. Justice Imam.

BHIKU HOSSEIN

v.

EMPEROR.*

1912
 ———
 April 18.

Magistrate, jurisdiction of—Deputy Magistrate in charge of the office of the District Magistrate at head-quarters—Subordination of the Subdivisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity, effect of—Power of the same to dismiss the complaint, and order the prosecution of the complainant, on evidence taken at the investigation and on the report of the Subdivisional Officer—Criminal Procedure Code (Act V of 1898), ss. 12, 202, 203, 476 and 529(f).

A Subdivisional Magistrate is not, under s. 202 of the Criminal Procedure Code, subordinate to a Deputy Magistrate, appointed to act in the district, without definition of the local limits of his jurisdiction, who was in charge of

*Criminal Reference No. 25 of 1912, by Bernard V. Nicholl, Sessions Judge of Dinajpore, dated Feb. 15, 1912.

1912
 ———
 BHIKU
 HOSSEIN
 v.
 EMPEROR.

the office of the District Magistrate at head-quarters during the latter's absence on tour, and such Deputy Magistrate cannot, therefore, after taking cognizance of an offence committed in the subdivision, and examining the complainant on oath, direct a local investigation by the Subdivisional Magistrate, nor can he thereafter dismiss the complaint, and order the prosecution of the complainant under s. 476 of the Code on such report, and the evidence taken at the investigation.

Section 529(*f*) does not, in the circumstances, confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution, but vests the Subdivisional Magistrate with seisin of the case, and the latter alone can inquire into it, and pass final orders.

ON the 27th November 1911, one Bhiku Hossein, resident of the Balurghat subdivision of the district of Dinajpore, preferred a complaint before Mr. Gyan Sankar Sen, Deputy Magistrate, with first class powers, who was then in charge of the Sudder station during the absence of the District Magistrate on tour, against Shamapodo Mukherjee, daroga of the Balurghat thana, the chota daroga, a head-constable and a constable, all of the same thana, the beat s rdar of village Tinshira, and a chowkidar, charging them with offences under sections 342 and 384 of the Penal Code committed on the 3rd instant in the subdivision. The complaint contained a rider explaining the delay and the reasons for not filing the complaint before the Subdivisional Officer. The Government Notification transferring Mr. Sen to the district only stated that the said Magistrate "is transferred to the head-quarters station of the Dinajpore district" without defining the local area of his jurisdiction as a first class Magistrate. The standing order, dated 25th April 1910, with reference to the Deputy Magistrate, was as follows:—"Mr. Sen, Deputy Magistrate, is hereby empowered to take cognizance under s. 190 (*a*) and (*b*), Criminal Procedure Code, and also to transfer cases of which he has taken cognizance under s. 192, and in the case of the District Magistrate being on tour he will remain in charge of

my office and do the current work." Mr. Sen examined the complainant on oath under s. 200 of the Criminal Procedure Code, and recorded the following order:—"Copy of complaint to Police for information and for deputation of a superior officer for investigation along with the Subdivisional Officer of Balurghat to whom the original complaint is forwarded for enquiry." In compliance with the order, the latter examined witnesses on the 6th and 7th December, and submitted a report on the 18th stating that the case was false and recommending the dismissal of the complaint and the prosecution of the complainant. The Deputy Magistrate in charge then, on the 18th January 1912, after considering the report and the evidence taken at the investigation and after hearing the complainant's pleader, dismissed the complaint under s. 203, and, acting under s. 476 of the Code, directed the trial of the complainant for an offence under s. 211 of the Penal Code, and sent the record to the District Magistrate for orders. The complainant thereupon moved the Sessions Judge of Dinajpore for further enquiry, and the latter referred the case to the High Court, on the 18th February, under s. 438 of the Code, without calling for an explanation from the District Magistrate, recommending the reversal of the order of the Deputy Magistrate passed under s. 476. The High Court was of opinion that the District Magistrate should be called upon for a full expression of his views on the question involved on the Judge's letter of Reference, and that the law officers of the Crown should be asked to appear as the matter was one of great importance.

The District Magistrate then submitted an explanation admitting that the Subdivisional Officer was not subordinate, under s. 202 of the Code, to the Deputy Magistrate, and that the latter was not entitled to

1912
 BHIKU
 HOSSEIN
 v.
 EMPEROR.

1912
 ———
 BHIKU
 HOSSEIN
 v.
 EMPEROR.

transfer the case to the former, but contending that the Deputy Magistrate acted *bonâ fide* under a misapprehension of the terms of Circular No. 645—49J.J., dated the 8th March 1910, of the Government of East Bengal and Assam, and the Revised Rules for enquiries into serious misconduct on the part of the police, and that the irregularity was cured by s. 529(f) of the Code.

The Advocate-General (Mr. Kenrick, K.C., with Mr. Monnier), for the Crown. The Government Notification transferring the Deputy Magistrate exercising first class powers to the district of Dinajpore did not define the local limits of his jurisdiction. He, therefore, had jurisdiction, under s. 12 of the Criminal Procedure Code, throughout the district. Under the standing order, dated the 25th April, he was empowered to take cognizance under s. 190(1)(a) and (b), and was placed in charge of the District Magistrate's office during the absence of the latter on tour. The Deputy Magistrate had, therefore, the powers of the District Magistrate, and the Subdivisional Officer was subordinate to him within the terms of ss. 17 and 202 of the Code. The orders of the Deputy Magistrate directing a local investigation by the Subdivisional Officer, dismissing the complaint under s. 203, and directing the prosecution of the complainant under s. 476, upon the evidence taken at the local investigation, were not *ultra vires*. Assuming that the order under s. 202 was bad, the irregularity was cured by s. 529(f), and the subsequent orders were passed with jurisdiction.

Mr. J. N. Roy (with him *Babu Manmatha Nath Mukherjee*), for Bhiku Hossein. The orders of the Deputy Magistrate in charge are illegal on the face of them. A Subdivisional Officer is not subordinate to

him, and the latter could not, therefore, refer the complaint to the former for local investigation and report, nor dismiss the complaint on such report and evidence taken at the investigation, nor pass an order under section 476 on such materials.

1912
 BHIKU
 HOSSEIN
 v.
 EMPEROR.

HOLMWOOD AND IMAM JJ. This was a Reference made by the learned Sessions Judge of Dinajpore recommending that the order passed by the Deputy Magistrate at head-quarters, under section 476 of the Criminal Procedure Code, directing the trial of the complainant under section 211 and sending the case to the District Magistrate for orders, should be set aside. At the same time he informed us that there was a motion before him to order further enquiry into the matter. He did not think it proper to deal with it himself, because it might prejudice our order in regard to the matter under section 476 of the Criminal Procedure Code. He says it seemed to him that the proper course to take was to submit this Reference for decision before proceeding to dispose of the other motion.

We need not, therefore, go into the point of the necessity for further enquiry under section 203, as we have dealt with it in a similar case to this in a somewhat lengthy judgment delivered this morning in which we pointed out that the Government Circular with regard to enquiries into complaints against Police officers has been greatly misunderstood, that that Circular cannot be held to refer to any kind of local investigation under section 202 of the Criminal Procedure Code, and that the local investigation which it mentions is a full and complete judicial enquiry on the spot after process issued and hearing witnesses on both sides and taking the explanation of the accused person.

1912
BHIKU
HOSSEIN
v.
EMPEROR.

It is clear that the accused person cannot be called upon for explanation nor can be called upon to produce witnesses, unless and until there is ground for issuing process against him, and the law says that if upon complaint there is ground for issuing process against him, the Magistrate shall issue summons for the attendance of the accused. That is section 204. The idea seems to have been that the Police officer might have an opportunity of defending himself and getting his accuser charged with bringing a false case without a trial, that is to say, judicial trial. Now that would be as unfair to the complainant as the converse procedure would be to the accused. We must take it that the Government intended that both sides should have full and free justice, and, therefore, when a complaint is made against a Police officer of a certain offence, under section 202, the Magistrate who entertains the complaint must either go to the spot and make enquiry himself and issue process if he finds it necessary to call upon the accused to answer to anything, or if he makes it over under section 192 to any other Magistrate of the first class, that Magistrate must be vested with full seisin of the case and must continue the enquiry up to the necessary order of discharge, acquittal or conviction, as the case may be. But that is hardly the point which the learned Judge has referred to us. This is a point which he will have to deal in the light of the remarks which we have just made.

The point which he makes is that the Deputy Magistrate at head-quarters had no power as such to transfer the investigation to the Subdivisional Officer of Balurghat, and the District Magistrate in his explanation has frankly admitted that this is so; but, as he points out, an error made in good faith is cured by section 529. Granted that this is so, this Subdivisional

Officer was vested with full seisin of the case, and he alone can enquire into it and pass final orders. But this is just what the petitioner in this case intended to avoid when he went to the District Magistrate with his complaint; and it appears to us that the reasons which weighed with the District Magistrate in allowing him to make his complaint before the officer at head-quarters are equally cogent now. Nothing has occurred since to render it the less desirable that some officer other than the local officer at Balurghat should make this enquiry. The cure of the erroneous order of transfer by section 529 would only give the Subdivisional Officer, as we have seen, jurisdiction; it could not confer jurisdiction on the Deputy Magistrate at head-quarters to recall the case to be dealt with under section 203, or pass any orders under section 476. All those orders, therefore, are *ultra vires* and without jurisdiction. Whether there should be a further enquiry into the case or not is a matter which the Sessions Judge will now no doubt have no difficulty in deciding. But we must make the Rule absolute as far as this Reference is concerned, and hold with the learned Judge that the order for prosecution under section 476 is without jurisdiction and must be set aside.

E. H. M.

1912

BHIKU
HOSSEIN
v.
EMPEROR.